

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 1:18-CR-02945-WJ

HUJRAH WAHHAJ,

Defendant.

**ORDER REGARDING MOTION FOR *LAFLER/FRYE* HEARING**

**THIS MATTER** came before the Court on the United States' Motion for *Lafler/Frye* Hearing, filed February 13, 2023. Doc. 619. Chief Judge Johnson granted the motion for a hearing and referred the matter to me pursuant to Fed. R. Crim P. 59(a) to conduct the hearing. *See* Doc 622 at 1. He further ordered me to "make the prosecution's proposed plea agreements sealed exhibits at the hearing and verify that Defendants and defense counsel discussed the terms of the plea agreements before rejecting the United States' proposed resolution." Doc. 622 at 2. The Court held a hearing on the motion with respect to Hujrah Wahhaj on February 24, 2023. Doc. 643. AUSAs Kimberly A. Brawley and Jackson Tavo Hall appeared on behalf of the United States. Donald Kochersberger appeared on behalf of Defendant, Hujrah Wahhaj, who was personally present.

Based on the representations of counsel and the testimony of Hujrah Wahhaj, the Court finds the following facts:

On January 23, 2023, the United States sent an email to Mr. Kochersberger extending a plea offer to Ms. Hujrah Wahhaj<sup>1</sup>; the proposed plea agreement was attached to the email. The

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<sup>1</sup> Because three of the five co-defendants in this case share the same last name, the Court refers

plea offer was a global offer which required all defendants to accept the plea offer for any defendant to be able to accept it. Before Mr. Kochersberger received the formal plea offer, he had discussed the general parameters of the expected plea offer with Ms. Hujrah Wahhaj. On February 9, 2023, Mr. Kochersberger and Ms. Hujrah Wahhaj met in person, and Mr. Kochersberger gave Ms. Hujrah Wahhaj a copy of the proposed plea agreement. Mr. Kochersberger went over the plea agreement with Ms. Hujrah Wahhaj page by page, and he explained it to her. Ms. Hujrah Wahhaj and Mr. Kochersberger discussed the pros and cons of accepting the plea offer, and Ms. Hujrah Wahhaj decided to reject the plea offer. Before rejecting the plea offer, Mr. Kochersberger answered all of Ms. Hujrah Wahhaj's questions to her satisfaction. Ms. Hujrah Wahhaj had a full and complete opportunity to discuss the plea offer with Mr. Kochersberger, and after those discussions, she herself decided to reject the plea offer. Ms. Hujrah Wahhaj understood that it was solely her decision whether to accept or reject the plea offer. She was not threatened or forced in any way to reject the plea offer.

Ms. Hujrah Wahhaj understood that she could not later change her mind and get the same plea deal that the United States offered her in January of 2023. She also understood that the government's offer was a global offer, and that if she rejected the plea offer, her co-defendants likely could not accept the plea offer that was extended to them. Ms. Hujrah Wahhaj testified that she understood that in rejecting the government's plea offer, her case likely would result in a jury trial. She further understood that if she goes to trial and is convicted, her sentence might be longer than the sentence she would have received had she accepted the government's plea offer. She also understood that if she goes to trial and is convicted, she cannot then change her mind and try to get the plea deal that the government offered her in January of 2023.

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to these defendants by their full name to avoid confusion.

After considering all the information and evidence provided at the hearing, the Court is convinced that Ms. Hujrah Wahhaj received the government's plea offer, understood its terms and effects, independently and voluntarily rejected it after consulting with competent counsel, and understood that rejecting the offer likely would result in a jury trial.

**IT IS THEREFORE ORDERED** that the United States' Motion for *Lafler/Frye* Hearing is **GRANTED** to the extent that the Court held the hearing. The Court finds that the United States extended a formal plea offer to Ms. Hujrah Wahhaj on January 23, 2023, in the form of a proposed plea agreement,<sup>2</sup> that offer was conveyed and explained to Ms. Hujrah Wahhaj in a timely manner, and, after consulting at length with her attorney, Ms. Hujrah Wahhaj knowingly and voluntarily rejected the plea offer.



LAURA FASHING  
U.S. MAGISTRATE JUDGE

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<sup>2</sup> The proposed plea agreement that the United States emailed to Mr. Kochersberger on January 23, 2023, which Mr. Kochersberger and Ms. Hujrah Wahhaj later discussed, is attached to the minutes of the hearing as government's sealed exhibit no. 2. See Doc. 643-1. Ms. Hujrah Wahhaj confirmed that this exhibit is the proposed plea agreement that she reviewed with Mr. Kochersberger.